

AFTER RECORDING RETURN TO:

City of Tukwila
City Clerk's Office
6200 Southcenter Blvd.
Tukwila, WA 98188

EASEMENT

Grantor: Jorgensen Forge Corporation
Grantee: City of Tukwila, a municipal corporation of the State of Washington
Assessor's Tax Parcel No.: _____
Full legal description of the subject property and easement is set forth in Exhibits "A".

1. Recitals.

Formatted: Font: Bold

WHEREAS, the Grantor is the owner of that certain real property legally described on Exhibit "A", attached hereto and incorporated herein by this reference.

WHEREAS, this instrument sets forth the terms and conditions under which the Grantor will grant the Grantee an easement.

WHEREAS, there is currently a 24-inch pipe located on Grantor's property that is part of a stormwater drain system used by the King County Airport and adjacent ~~property~~properties, including property owned by Grantee;

WHEREAS, the parties have not located any record of who or what entity installed the 24-inch pipe located on Grantor's property;

WHEREAS, testing has revealed the presence of PCBs in the 24-inch pipe, and other hazardous substances regulated under the Model Toxics Control Act (MTCA) and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) in the vicinity of the pipe;

WHEREAS, in November of 2008, the Washington Department of Ecology (DOE) issued a Notice of Violation to Grantee and King County for discharge of stormwater into the pipe;

WHEREAS, in November of 2009, the Washington Department of Ecology notified Grantor of its responsibility as owner of the 24-inch pipe to test for and eliminate discharge of PCBs from the pipe;

WHEREAS, the Burdened Property currently is the subject of certain orders requiring environmental investigation and remediation, including Agreed Order No. DE 4127 issued under MTCA on July 12, 2007 and Administrative Order on Consent No. 10-2003 issued under CERCLA on July 10, 2003 as amended by No. 10-2003-0111 on April 15, 2008;

WHEREAS, on September 30, 2010, the U.S. Environmental Protection Agency issued an Action Memorandum for the Jorgensen-Forge Outfall Site, which requires that a time-critical removal action be undertaken to clean, close, and seal the 24-inch pipe with inert material;

WHEREAS, Grantor and the Boeing Company have entered into Administrative Order on Consent for Removal Action No. 10-2011-0017, issued under CERCLA in November 2010, which Order requires implementation of the time-critical removal action described in the September 30, 2010 Action Memorandum;

WHEREAS, Grantor also anticipates that the Environmental Protection Agency (EPA) will require Grantor to conduct environmental investigation and remediation in sediments of the Duwamish River adjoining the Burdened Property pursuant to another CERCLA order or consent decree;

WHEREAS, Grantor further anticipates that it may enter into an agreement with the United States, the State of Washington, and certain Native American tribes requiring Grantor to undertake and maintain a natural resource restoration project on the Burdened Property;

WHEREAS, property owned by the Boeing Company that adjoins the Burdened Property currently is the subject of environmental investigation and remediation requirements, including those set out in Administrative Order on Consent No. 1092-01-22-3008(h), issued January 18, 1994;

WHEREAS, Grantor anticipates that Boeing will enter into Administrative Order on Consent for Removal Action No. 10-2011-0017, and a Consent Decree in *United States et al. v. The Boeing Company*, U.S. District Court for the Western District of Washington No. CV-10-758, and that these documents will require environmental investigation, remediation, and natural resource restoration relating to the 24-inch pipe and on Boeing property adjoining the Burdened Property;

WHEREAS, it is unknown whether all contamination will be removed from the Burdened Property as a result of the environmental remediation described above, or when such remediation will be completed; and

WHEREAS, the parties desire to enter into this Easement to allow for the possibility of the replacement of the existing 24-inch pipe at such time as the requirements of the Orders and Consent Decrees described above have been completed;

2. Grant and Purpose of Easement.

For and in consideration of the sum of Ten Dollars (\$10.00), and other good and valuable consideration, receipt of which is hereby acknowledged, Jorgensen Forge Corporation ("Grantor"), a Washington corporation, its successors, heirs and assigns, as owner of the following described real property, hereby conveys and grants to the City of Tukwila ("Grantee"), a municipal corporation, its successors and assigns, a perpetual nonexclusive easement over, under, upon and across the following described property (the "Burdened Property") for the purpose of discharging storm drainage and accessing a storm drainage pipe. The Burdened Property is legally described as set forth in Exhibit "A," attached hereto and by this reference incorporated herein.

The Easement Area consists of 10 feet on either side of the center line of the existing 24-inch storm drainage pipe located on the Burdened Property and shown on Exhibit "B". ~~[Note: The final width of the Easement Area needs to be determined. It likely will be slightly narrower than 20 feet to accommodate existing improvements.]~~ The purpose of the Easement is solely for a future subsurface stormwater drainage pipeline, access manholes, outfall and appurtenances thereto (the Stormwater System). Any and all maintenance of said improvements shall be Grantee's responsibility. The Grantor shall retain the right to use the surface of said Easement Area, so long as said use does not interfere with the capacity and proper functioning or maintenance of the Stormwater System.

3. General Provisions.

A. Terms. Grantee shall have the right to place a subsurface stormwater drainage pipeline, access manholes, outfall and appurtenances thereto within the Easement Area (the "Option") for a period of ten (10) years beginning on the date that Grantor and Boeing satisfy all requirements of the Orders and Consent Decrees described in the recitals above, with the exception of operation and maintenance requirements (the "Option Term"). The Option Term will begin when Grantor notifies the Grantee in writing that all such requirements have been satisfied, with documentation supporting the same from the government agencies responsible for overseeing the remediation and restoration. Grantee must notify Grantor in writing of its intention to exercise the Option at least 30 days before beginning installation of the Stormwater System. Should the Grantee exercise the Option within the Option Term, the Easement shall continue in perpetuity. Should Grantee not exercise the Option within the Option Term, Grantee agrees to promptly file and record a release of this Easement.

B. Relocation. The parties agree to negotiate in good faith to identify a different location for the Easement Area if certain constraints to the construction of the Stormwater System become apparent during the design or installation phase. However,

Formatted: Highlight

Grantor does not guarantee that the Easement Area can be relocated, or that installing and operating the Stormwater System as provided under this Easement is feasible. Grantor has no obligation to provide a new location for the Easement Area.

C. Access. Grantee shall have the right of access to the Easement Area under, across, and over the Burdened Property to enable Grantee to inspect and otherwise exercise its rights hereunder. However, Grantee shall notify Grantor at least five (5) business days before entering onto the Burdened Property, and shall reschedule its entry if Grantor so requests. Notwithstanding the foregoing, in case of an emergency, Grantor shall allow Grantee reasonable access to address the emergency. Grantee shall stage installation of the Stormwater System so as to minimize any interference with Grantor's operations. Grantor and Grantee herein acknowledge that access to all subsurface features by the Grantee shall be limited to the drainage pipe itself, the access manholes, the outfall, and appurtenances. There shall be no drilling, excavation, or other disturbance of ground without prior approval of the Grantor herein. Grantee shall have the ability to access the Stormwater System through the use of television, i.e. mobile procedure wherein a camera can be placed within the drainpipe. Grantee shall use best efforts to avoid damage to any real or personal property on the Burdened Property, and shall promptly repair any such damage that occurs while exercising its rights under this Easement.

D. Contamination Plan. Grantee acknowledges that areas of the Burdened Property, potentially including the Easement Area, may remain contaminated even after the Orders and Consent Decrees described in the recitals above have been completed. Before beginning construction of the Stormwater System, Grantee shall review all reports describing then-current conditions in the vicinity of the Easement Area, which reports Grantor shall provide to Grantee upon request. If the reports indicate that contamination remains in the vicinity of the Easement Area, Grantee shall prepare a plan for characterizing and properly managing in accordance with applicable federal, state, and local laws any contamination, including any contaminated environmental media, it encounters during construction and maintenance of the Stormwater System (the "Contamination Plan"). If Grantee proposes to remove the existing 24-inch pipe, it shall include its proposal for doing so in the Contamination Plan. Grantee shall provide a copy of the Contamination Plan to Grantor and to all state or federal environmental and natural resource agencies that exercise regulatory authority over the Burdened Property. Grantee may not proceed with construction of the Stormwater System until each such agency approves the Contamination Plan. After receiving such approval(s), Grantee shall implement the Contamination Plan at its sole expense. Grantee shall promptly document its actions pursuant to the Contamination Plan and shall provide copies of all such documentation to Grantor.

E. Maintenance. The parties hereto agree that the Grantee shall be solely responsible for maintaining the Stormwater System. However, if Grantor's negligent actions cause the need for maintenance Grantor shall reimburse Grantee for the reasonable costs of such maintenance.

F. Structures and Obstructions. The Grantor, its successors, heirs, employees, agents and assigns hereby shall not cause any structure or obstruction of a temporary or permanent nature (including but not limited to, fences and/or walls) to be constructed in, over or upon the Easement Area herein granted with the exception of any structures or obstructions currently in place or approved of in writing by Grantee; provided, however, that Grantor may undertake a natural resource restoration project on the Burdened Property, potentially including the Easement Area. Notwithstanding any other provision of this Agreement, Grantor shall not be prohibited from undertaking such project, and Grantee shall not interfere with the proper operation and maintenance of such project. Grantee acknowledges that there is a railroad trestle directly to the south of the Easement Area, and there are power poles directly to the north of the Easement Area. ~~*[Note: Margaret, the original easement area is the best location. The current storm water lines actually lie between the track and the fence line. The tracks are seldom used but if the tracks are in the way, with some coordination, they could be removed and put back down without significant disturbance to operations. Also, we may need to confirm location of power line easement. Let's discuss.]*~~ In exercising its rights under this Easement, Grantee shall avoid damaging or undermining these existing improvements.

G. Regulatory Requirements: Health and Safety; Security. Grantee shall be solely responsible for obtaining any and all permits and regulatory approvals needed to install and operate the Stormwater System, and for complying with any regulatory requirements that apply to the Stormwater System. In addition, when exercising its rights under this Easement Grantee shall comply with (1) all applicable worker health and safety requirements, including any Health and Safety Plans in effect on the Burdened Property, and (2) all security-related requirements applicable to third-party contractors entering Grantor's facility.

H. Indemnification and Release. Grantee shall release the Grantor, its employees, agents or invitees, and indemnify, defend, and hold them harmless from all costs, claims, or liabilities of any nature, including civil penalties, attorneys' fees, costs, and expenses for or on account of the following:

- (1) injuries or damages sustained by any persons or property arising out of the negligent activities or omissions of the Grantee in exercising its rights under this Easement;
- (2) remedial, response, or removal action to address hazardous substances released or encountered during Grantee's installation or maintenance of the Stormwater System;
- (3) preparation and implementation of the Contamination Plan referenced in D of this Agreement; and

- (4) the release of hazardous substances, pollutants, or contaminants from or through the Stormwater System (including but not limited to the costs of remedial, response, or removal actions related to sediments or other media contaminated or recontaminated by discharges from the Stormwater System).

Grantor shall indemnify, defend, and hold the Grantee and its officers, agents and employees harmless from all costs, claims or liabilities of any nature including civil penalties, attorneys' fees, costs and expenses for or on account of injuries or damages sustained by any persons or property resulting from the negligent activities or omissions of the Grantor, or Grantor's employees, agents or invitees resulting from this easement except, however, from any costs, claims, or liabilities for or on account of the presence of hazardous substances on the Burdened Property, provided that the hazardous substance is not a new release as a result of recent conduct of the Grantor.

I. No Contamination. Grantee shall be responsible for ensuring that the Stormwater System, including discharge from the System, does not contaminate or recontaminate sediments, surface waters, or soil, or impair the effectiveness or protectiveness of any remedial, response, or removal action undertaken on the Burdened Property or in adjacent sediments. Upon request of Grantor, Grantee shall monitor the discharge and sediments adjacent to the outfall and provide the monitoring results to Grantor.

Formatted: Highlight

J. Decommissioning of Stormwater System. Within ninety (90) days of abandoning the Stormwater System, Grantee shall at its sole expense remove or otherwise decommission the Stormwater System to prevent inflow and outflow of stormwater and other substances. Within thirty (30) days of removing or otherwise decommissioning the Stormwater System, Grantee shall (1) provide Grantor with written documentation of all actions taken to remove or otherwise decommission the Stormwater System, and (2) file and record a release of this Easement.

K. Attorneys' Fees. In the event that any suit or other proceeding is instituted by either party to this instrument arising out of or pertaining to this instrument or the relationship of the parties, including but not limited to the filing of a lawsuit, a request for an arbitration, mediation, or other alternative dispute resolution process (collectively, "Proceeding"), and any appeals and collateral actions relative to such a Proceeding, the substantially prevailing party as determined by the court or as determined in the Proceeding shall be entitled to recover its reasonable attorneys' and expert witness fees and all costs and expenses incurred relative to such Proceeding from the non-prevailing party, in addition to such other relief as may be awarded.

L. Binding Effect. This instrument shall be binding upon and inure to the benefit of the parties and their successors, heirs, assigns, and personal representatives and all persons claiming by, through or under the parties hereto. The easement created by this instrument shall be appurtenant, shall touch and concern the real property identified as Exhibit A, and shall run with the land.

M. Limitation on Assignment. Grantee may not assign its rights under this Easement except to the transferee(s) of the Grantee's interest in the real property or stormwater system that currently drains to the existing 24-inch pipe.

N. Applicable Law. This instrument shall be governed by and construed in accordance with the laws of the State of Washington. Jurisdiction over and venue of any suit arising out of or related to this instrument shall be exclusively within the state or federal courts of King County, Washington.

O. Entire Agreement. This instrument contains the entire agreement between the parties with respect to this matter. It may not be modified except in a writing signed by both parties.

P. Waiver. Any waiver by a party of a breach of any provision of the agreement contained within this instrument by the other party shall not operate or be construed as a waiver of any subsequent breach by that party. No waiver shall be valid unless in writing and signed by the party against whom enforcement of the waiver is sought.

Q. Severability. If for any reason any portion of this instrument or any agreement contained herein shall be held to be invalid or unenforceable, the holding of invalidity or unenforceability of that portion shall not affect any other portion of this instrument or agreement and the remaining portions of the instrument shall remain in full force and effect.

DATED this ____ day of _____, 2010.

GRANTEE

GRANTOR

CITY OF TUKWILA, WASHINGTON

JORGENSEN FORGE CORPORATION

By: _____

By: _____

Title: Mayor

Title: _____

Date: _____

Date: _____

Attest/Authenticated:

Approved As To Form:

City Clerk

City Attorney

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this ____ day of _____, 2010, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Jim Haggerton, to me known to be the person who signed as Mayor of the City of Tukwila, a municipal corporation of the State of Washington, that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that he was duly elected, qualified and acting as said officer of the corporation, that he was authorized to execute said instrument for the purposes mentioned therein.

IN WITNESS WHEREOF I have hereunto set my hand and official seal the day and year first above written.

Print Name: _____
Notary Public in and for the State of
Washington,
residing at _____
My commission expires: _____

STATE OF WASHINGTON)
)ss.
COUNTY OF KING)

On this ____ day of _____, 2010, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____, to me known to be the person who signed as _____ of Jorgensen Forge Corporation, that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that he was duly elected, qualified and acting as said officer of the corporation, and that he was authorized to execute said instrument on behalf of the corporation.

IN WITNESS WHEREOF I have hereunto set my hand and official seal the day and year first above written.

Print Name: _____
Notary Public in and for the State of
Washington,
residing at _____
My commission expires: _____

Exhibit “A”

LEGAL DESCRIPTION OF PARCEL NO. _____